

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
******* MINUTES *******
REGULAR MEETING – MONDAY, JANUARY 14, 2013

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, January 14, 2013 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Don Walker, Acting Chairman (PC Rep. to ZBA)	Mike Flood (BOT Rep. to ZBA)
Dan Durham, Board Member	Lucy Koscierzynski, Board Member
Tony Cook, Board Member (Alternate)	

ZBA MEMBER ABSENT:

Loren Yaros, Chairman

CONSULTANT PRESENT:

Thomas Berger, Building Official

OTHERS PRESENT:

Wes Malear	Dave Welch	Richard Welch
Brian Blizzard	Bill Siewert	Gene McNabb
Mark Latshaw	Valerie Keyes	Anthony Coneff
Lindsey-Anne Gawthrop	Robert Gawthrop	Candice Garbacz
Roland Stoops	Phoebe Schutz	

1. OPEN MEETING

Acting Chairman Walker called the meeting to order at 7:00 p.m.

2. ROLL CALL

Loren Yaros was absent.

3. ELECTION OF OFFICERS

Acting Chairman Walker noted that the Chairman is not in attendance of this meeting and that the Vice-Chairman position is currently open, so there are no officers here tonight. He asked members if they would want to postpone the Election of Officers until Mr. Yaros returns.

Moved by Board Member Flood, supported by Board Member Durham to postpone the Election of Officers of this board until the February 25, 2013 regular meeting. Roll call vote was as follows: Cook, yes; Koscierzynski, yes; Flood, yes; Durham, yes; Walker, yes. **Motion carried 5-0.**

4. MINUTES

Moved by Board Member Flood, supported by Board Member Durham to approve the December 10, 2012 regular meeting minutes as presented. **Motion carried unanimously.**

5. AGENDA REVIEW AND APPROVAL

No changes were made to the agenda.

6. ZBA BUSINESS

A. AB-2013-01, MLS Signs, Inc./William B. Siewert, 1025 Lapeer Road/Lake Orion Plaza Sign, Sidwell #09-14-226-008

Acting Chairman Walker noted that the petitioner is requesting two variances from Sign Ordinance No. 138: 1)a variance to install a 30.03-square foot LED message center within a ground sign; and, 2)a 14.66-square foot variance, over the allowed 60 square feet in sign area, to increase the size of an existing ground sign to 74.66 square feet.

**CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING – MONDAY, JANUARY 14, 2013**

Mr. William B. Siewert, of MLS Signs, Inc., was present to represent the petitioner. He noted that their hardship case is that the Hollywood Market is looking to use this reader board for a changeable copy to advertise their groceries. He also noted that this request is different from their previous requests since they decided that they'd like to go to a bigger message center. He also noted that they will abide by whatever the board decides as far as the time between changing messages, color of letters, whether or not it will scroll, etc. and that there will be no animation, just letters.

Acting Chairman Walker inquired why they want the bigger size than what they asked for last time.

Mr. Siewert noted that Hollywood Market decided to get more involved in this and if the sign were smaller, they wouldn't be able to put their specials out there, just one at a time, so they decided that they would like to have a larger message center so they could put four specials up there versus two specials.

Mr. Wes Malear, of 2740 Gorlad Street, Lake Orion, Michigan, noted that he is a Lake Orion resident. He then showed members some drawings that he distributed there at the meeting of what he said Hollywood Market wants to have to advertise their one-day specials. He said that their other stores have had great success with them.

Mr. Tom Berger, Township Building Official, noted that the previous motion made for the sign was expired since over a year has passed and no work had been started on it.

Board Member Cook inquired whether other tenants would be advertising on the sign and whether they'd have the same requirements, such as no animation, etc.

Mr. Malear noted that they will have the controls in their store and will control it and stated that he won't allow the sign to look crappy. They have agreed that the other tenants could use the sign, but they are going to pay for the majority of this sign, so they want 70% to 80% of the sign visual and they would offer it to the other tenants when requested.

Mr. Richard Welch, of 362 Clint Court, noted that he is also an Orion Township resident and commented that part of the reason they didn't put the other variance together is that they went back and tried to get the rest of the center to pitch in for the sign and they decided not to, so they took it upon themselves to move forward and they're going to offer up part of that sign, but if they're going to pay for it, they're hoping to increase the size and make it more user-friendly for them. The sign will only be one color with a black background and red or amber letters. The scrolling can be turned off and it's not something that we're going to use.

Acting Chairman Walker inquired what hours the sign will be on.

Mr. Malear noted that the hours that the sign will be on will be from 7:00 a.m. to 9:30 p.m. on Monday through Saturday and from 8:00 a.m. to 8:00 p.m. on Sunday. He also stated that they will have a timer to turn off the sign after business hours.

Board Member Cook suggested that they also allow the sign to be on one hour before the store opens and one hour after the store closes.

Moved by Board Member Cook, supported by Board Member Flood regarding case AB-2013-01, MLS Signs, Inc./William B. Siewert, 1025 Lapeer Road/Lake Orion Plaza Sign, Sidwell #09-14-226-008, to **grant with conditions** the two variances as requested from Sign Ordinance No. 138: 1)Section 5,A, a variance to install a 30.03-square foot LED message center within a ground sign; and, 2)Section 8,B, a 14.66-square foot variance, over the allowed 60 square feet in sign area, to increase the size of an existing ground sign to 74.66 square feet, because the petitioner did demonstrate that practical difficulties exist in this case and has set forth facts to show that the sign, and this is contingent upon the petitioner agreeing to having the sign operate between the hours of 6:00 a.m. and 10:30 p.m., and that the sign will not be animated nor will it scroll outside the timeline boundaries of Section 5 of the sign ordinance. Roll call vote was as follows: Flood, yes; Durham, no; Cook, yes; Koscierszynski, yes; Walker, yes. **Motion carried 4-1.**

**CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING – MONDAY, JANUARY 14, 2013**

B. AB-2013-02, Kenneth R. Latshaw, 717 Brown Road/Checkers Drive-Thru Restaurant Signs, Sidwell #09-33-351-035

Acting Chairman Walker noted that the petitioner is requesting four variances from Sign Ordinance No. 138: 1)a 12.27- square foot variance, over the allowed 32 square feet in sign area, in order to install a 44.27-square foot ground sign; 2) a 12-foot variance, from the required 30-foot road right-of-way setback, in order to install a ground sign 18 feet from the road right-of-way; 3)a variance for two additional directional signs, above the allowed four, in order to install a total of six directional signs; and, 4)a variance for one additional wall sign, over the one allowed wall sign, for a total of two wall signs.

Mr. Mark Latshaw, of 2681 Shadow Lake Drive, was present and noted that he is representing Checkers Restaurant. He noted that the reasons they're requesting the first variance is because they need more space to advertise their daily specials also to make it bigger for passers-by to be able to read it. The second variance is due to the fact that due to the configuration and layout of this property, there is only one spot to place the sign and in doing so it has to be set back 18 feet and any closer or further back would not be feasible or viable. Due to the retention ponds that they're required to put in on the front of the property it has hampered them from putting it anywhere else on the site. The third variance is actually for four directional signs for enter/exit and two height clearance signs. The fourth variance is for a wall sign that will say "Checkers" on the front of the building since the menu board on the front of the building is considered a wall sign.

Board Member Cook inquired what happened at the last meeting regarding this site.

Mr. Tom Berger, Township Building Official, explained what happened at the last meeting for case AB-2012-29 for this site regarding the interpretation and since there was no language in the sign ordinance for the BIZ zoning district.

Acting Chairman Walker offered time for public comments on this case. None were given.

Moved by Board Member Flood, supported by Board Member Koscierzynski regarding case AB-2013-02, Kenneth R. Latshaw, 717 Brown Road/Checkers Drive-Thru Restaurant Signs, Sidwell #09-33-351-035, to **grant** the four variances as requested from Sign Ordinance No. 138, under the General Business-1 (GB-1) Zoning District since there is no language in the sign ordinance for the Brown Road Innovation Zone (BIZ) Zoning District: 1)Section,8,B, a 12.27- square foot variance, over the allowed 32 square feet in sign area, in order to install a 44.27-square foot ground sign; 2)Section 8,B, a 12-foot variance, from the required 30-foot road right-of-way setback, in order to install a ground sign 18 feet from the road right-of-way; 3)Section 4,J, a variance for two additional directional signs, above the allowed four, in order to install a total of six directional signs; and, 4)Section 8,B, a variance for one additional wall sign, over the one allowed wall sign, for a total of two wall signs; because the petitioner did demonstrate that practical difficulties exist in this case and has set forth facts. Roll call vote was as follows: Durham, yes; Cook, no; Koscierzynski, yes; Flood, yes; Walker, no. **Motion carried 3-2.**

C. AB-2013-03, Robert Gawthrop, Vacant Parcel on Shady Oaks, Sidwell #09-10-254-035

Acting Chairman Walker noted that the petitioner is requesting five variances from Zoning Ordinance No. 78, in order to construct a new home: 1)a 31.46-foot rear yard setback variance from the required 35-foot rear yard setback in order to build a home 3'6.5" from the rear lot line; 2)an 8.46-foot front yard setback variance from the required 30-foot front yard setback in order to build a home 21.54 feet from the front property line; 3)a 12.71-foot front yard setback variance from the required 30-foot front yard setback in order to build a balcony on a home 17.29 feet from the front lot line; 4)an 18.58-foot front yard setback variance from the required 30-foot front yard setback in order to build a deck 11.42 feet from the front lot line; and, 5) a 24.125-foot rear yard setback variance from the required 35-foot rear yard setback in order to build a porch on a home 10'10.5" from the rear lot line.

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING – MONDAY, JANUARY 14, 2013

Mr. Robert Gawthrop and Mrs. Lindsey-Anne Gawthrop, of 100 Shorewood Court, were present. Mr. Gawthrop commented that they have tried to show on their plan that they are trying not to obstruct the view of their future neighbors there.

Acting Chairman Walker inquired why they want such a big house on that particular lot.

Mr. Gawthrop replied that they want this home to be the home they raise their children in and someday to retire in. He noted that they have contingently purchased this lot, so if they don't get the variance, they can walk away from it.

Board Member Durham inquired whether they have taken into account the sight lines, like from across the street.

Mr. Gawthrop replied that across the street are two lots that are also included in the purchase of this lot. As far as views from behind the lot, there is no view to obstruct. There's actually a tree lot that you'd have to go to another street behind and it still wouldn't be obstructed regardless of anything being built there or not.

Board Member Durham inquired whether they have any recreational vehicles and if so, where they intend to store them.

Mr. Gawthrop replied that they currently have a pontoon boat and they store it off-site.

Board Member Cook noted that the plan says the site is in a 100-year flood plain on the back side of the house, but the purchase agreement says that it's not.

Mr. Gawthrop noted that he can amend that with the seller. He didn't have a survey, so he actually paid for the survey himself, so the contract was actually drawn up before the actual survey was done.

Mr. Tom Berger, Township Building Official, noted that the petitioner needs to provide a copy of a registered land survey.

Board Member Cook inquired whether any of the five lots in their purchase package were adjoining the subject lot.

Mr. Gawthrop replied, no. There are three on the lake and two on the other side.

Acting Chairman Walker offered time for public comments on this case.

Ms. Candice Garbacz, of 447 Shady Oaks, noted that she lives next door to the subject site. Their major concern is that Mr. Gawthrop and members don't have correct or valid information on this property. Due to the drought last year, the water table is currently lower than it normally is, which is quite high. This site is the lowest lot in this area and normally is where water run-off runs through to the lake when it rains and when the snow melts and the water level is just below the surface of the soil. This lot does flood even though the county does try to correct the situation by installing cistern-like drains along Shady Oaks, however, when the water level rises, the cisterns fill to overflowing and drains across the street. The underground water flow has always existed in this area and their concern is that by blocking this natural drainage, the properties along Shady Oaks will be flooded. All the neighbors in the area have concerns. The entire area could be in danger and there also would constant pressure on the petitioner's foundation or basement. She then asked members to consider the hydrology of this area and the lot before issuing any permits. Blocking the natural flow of water endangers everyone. She is also concerned that the proposed balcony would obstruct the views and privacy from her home. Also, there are federal laws prohibiting anyone from building so close to a lake or any shoreline. The Road Commission for Oakland County (RCOC) told her that it would be six to eight weeks before they could let her view the hydrology maps although she has seen them before in 1996 and has talked to the RCOC about them. She is waiting for a response from the RCOC, MDEQ, and from FEMA. She asked that no permits be issued until some of the legal issues are addressed.

Acting Chairman Walker read aloud correspondence that also was received from Ms. Candice Garbacz, of 447 Shady Oaks, dated January 4, 2013, in opposition to the case AB-2013-03, Robert Gawthrop, regarding vacant lot on Shady Oaks, Sidwell #09-10-254-035*.

**CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING – MONDAY, JANUARY 14, 2013**

Mr. Roland Stoops, of 455 Shady Oaks, commented that he has two concerns and the first one is that the water level is very high in that area. In 1989, the Township put the sewer system in and that's when they paved the road. There is a sewer cistern right in front of his home. Since that time, every time it rains, it overflows a foot higher than the level of the grate and it overflows into the road. He wrote a letter to the RCOC complaining about this and their answer to him was that the water table in that area is so high that whenever it rains the cisterns are all going to just flood out since there is no place for the water to go. The sewer cannot handle the amount of water, not even during a rainstorm. So, we know that the water level is very high there. In looking at the plans for the proposed house, it would definitely block the natural water drainage area that goes through that property. The proposed foundation is 2'6" below water level, so the water would have to go to the other side of the road and flood out, which would cause damage to their properties in the neighborhood. Also, in looking at the plans, when pulling out of the driveway, you couldn't see if traffic is coming and would be halfway out into the road before you could see if traffic is coming, which is not safe.

Board Member Durham inquired whether Mr. Stoops has a water well.

Mr. Stoops replied that they do have a water well and that it is 35 feet deep.

Mr. Anthony Coneff, of 431 Shady Oaks, commented that he lives right next to the subject site. He agrees with his neighbors that have already spoken tonight. He's also concerned that the house would block his lake view. He's also concerned that with the proposed house being so close to the road, no driver going by would be able to see his grandson or anyone that would be near there. He believes that the proposed house is much too large for this particular lot. He asked that members consider postponing this case until more information is received from RCOC, MDEQ, and FEMA.

Mr. Gawthrop commented that they will provide members with a full survey. They have had soil borings done at the four corners of the proposed house to determine the lake level and noted that the foundation is not below the lake level and that it is sitting just above it. Also, he believes the garage would be eleven feet from the road.

Board Member Durham noted that he is concerned about moving forward on this case tonight, based on the uncertainty of the 100-year flood plain and the survey that may or may not show it and the purchase agreement that may or may not include it. Movement of water from one property to another can be a major issue.

Mr. Berger noted that there are ways that the petitioner could build the house and manage the water on his property, so that he wouldn't intensify water to an adjacent parcel.

Board Member Flood inquired whether the petitioner would consider reducing the size of the house.

Mr. Gawthrop replied yes if that's something that they need to do. He also noted that if the balcony is a big concern, then that is not a must-have for them.

Mrs. Gawthrop noted that it will be a small balcony to accommodate their bistro set to sit out there to enjoy the view.

Mr. Gawthrop noted that they are trying to be compatible with what other homes in the neighborhood have done. Also, the basement will only be partially in the ground. There will be grading on the front of the house to allow for the drainage and the slopes.

Board Member Cook inquired whether the petitioner would consider putting the garage across the street as the neighbors have done.

Mr. Gawthrop noted that they would need another variance to do that and there are a lot of large trees that would have to come down to do that. However, he would consider it.

Board Member Cook inquired whether the petitioners have considered any house plans for a smaller house.

Mrs. Gawthrop replied that this is what they want since this is their forever home.

**CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING – MONDAY, JANUARY 14, 2013**

Board Member Cook noted that his biggest concern is getting the survey and whether this site is within the 100-year flood plain or not as well concerns with the size of the lot. He also noted that the petitioner does have the option to postpone the case versus having the vote on it tonight.

Acting Chairman Walker noted that what Board Member Cook mentioned is a possibility that they may want to consider. He also noted that the Board could move forward on what the petitioners have provided today and they could vote on it if they would like them to. Or, they could ask to withdraw and come back at another time with another plan, but that is up to the petitioners.

Mr. Gawthrop noted that under their purchase agreement, they have 90 days to get the whole process done or the seller can back out. They feel that if they can't build what they'd like to build, that at that point they'd probably have to do something else. They are willing to do minor considerations, but they don't want to withdraw at this point. He then stated that they want to move forward tonight.

Moved by Board Member Durham, supported by Board Member Flood regarding case AB-2013-03, Robert Gawthrop, Vacant Parcel on Shady Oaks, Sidwell #09-10-254-035, that the petitioner is requesting five variances from Zoning Ordinance No. 78, in order to construct a new home under Article VI, Section 6.07, Single-Family Residential-3 (R-3) Zoning District: 1)a 31.46-foot rear yard setback variance from the required 35-foot rear yard setback in order to build a home 3'6.5" from the rear lot line; 2)an 8.46-foot front yard setback variance from the required 30-foot front yard setback in order to build a home 21.54 feet from the front property line; 3)a 12.71-foot front yard setback variance from the required 30-foot front yard setback in order to build a balcony on a home 17.29 feet from the front lot line; 4)an 18.58-foot front yard setback variance from the required 30-foot front yard setback in order to build a deck 11.42 feet from the front lot line; and, 5)a 24.125-foot rear yard setback variance from the required 35-foot rear yard setback in order to build a porch on a home 10'10.5" from the rear lot line. In this case I would move that the petitioner's request for non-use variances be **denied**, because the petitioner did not demonstrate that practical difficulties exist and that he set forth facts, which failed to show that either downsizing the proposed house or getting answers to questions about the water run-off, the 100-year flood plain, has not met the burden of practical difficulty as required by the ordinance. Granting the variances requested would possibly negatively affect the other surrounding property owners, which is still to be determined, because we have many questions that we don't have answers to regarding water run-off. The problem is not self-created, however, but we have too many questions and not enough answers and it appears that the petitioners do have some room to make some moves and based on these findings of fact, I would move that they be denied. Roll call vote was as follows: Cook, yes; Koscierzynski, yes; Flood, yes; Durham, yes; Walker, yes. **Motion carried 5-0.**

7. PUBLIC COMMENTS

None further.

8. COMMUNICATIONS

Board of Trustees meeting minutes were included in the meeting packets for members' information.

9. COMMITTEE REPORTS

None.

10. MEMBERS' COMMENTS

Board Member Flood noted that the Board of Trustees (BOT) has appointed a committee to begin work on the sign ordinance to compose new text to address sign regulations within the Brown Road Innovation Zone (BIZ) Zoning District.

Acting Chairman Walker commented that Mr. Joe Geraci, this past year's Vice-Chairman, will not be serving on the ZBA any longer. He noted that Mr. Geraci worked very hard on this board for many, many years and thanked him for all the fine work that he has done for our community. He then thanked members for their hard work tonight.

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING – MONDAY, JANUARY 14, 2013

11. ADJOURNMENT

Moved by Board Member Flood, supported by Board Member Cook to adjourn the meeting at 8:31 p.m.

Motion carried unanimously.

* Attachment